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Supreme Court, U.S.
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No. 92-760

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1992

JAMES P. SHANNON, et ux.,

Petitioners,

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the Seventh Circuit correctly found that the West Allis Memorial Employee Health Protection Plan ("Plan") is not a governmental plan within the meaning of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* ("ERISA") and, therefore, is governed by ERISA.

STATEMENT OF THE CASE

Respondent West Allis Memorial Hospital Employee Health Protection Plan ("Plan") incorporates by reference the statement of the case in the opinion of the United States Court of Appeals for the Seventh Circuit. (Petitioner's App. at 2-3)

SUMMARY OF THE ARGUMENT

The petition should be denied because it is not from a final order, and there are no reasons to depart from the policy against the review of interlocutory orders.

REASON FOR DENYING THE WRIT

The Seventh Circuit's decision is not final and is therefore not ripe for review. The Seventh Circuit ruled in favor of the respondents on the main issue on appeal, whether the Plan is governed by ERISA. But the court remanded the case with instructions to the district court to consider the propriety of its order of dismissal, including the appropriateness of the petitioners maintaining claims in this case that could have been asserted in a prior pending case and whether Mr. Shannon, who is not a lawyer, can litigate on behalf of his daughter. (App. at 18-22)

While the respondents are confident they will ultimately prevail in the district court, these remaining issues make review inappropriate at this time. Review by writ of certiorari is rare enough, and is extraordinarily rare where, as here, there is no final judgment. *Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916); *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 373 (1981).

This case does not justify an exception to the policy against review of interlocutory orders. The Seventh Circuit's decision involved the application of federal law to the particular facts in this case, which are important only to the litigants; there is no important constitutional issue; and there is no conflict between the Seventh Circuit's decision and decisions of other courts.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted this 25th day of November, 1992.

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